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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Tariff Filing Requirements for Nondominant Common Carriers	)	CC Docket No. 93-36
	)	

COMMENTS OF THE
ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES
ON NOTICE OF PROPOSED RULEMAKING

The Association for Local Telecommunications Services ("ALTS"), pursuant to the Notice of Proposed Rulemaking ("NPRM") released in the above-referenced proceeding on February 19 1992, hereby submits comments strongly supporting adoption of the tariff rules proposed in the NPRM.

ALTS is the non-profit national trade organization representing providers of competitive access services. ALTS currently counts among its members over 25 non-dominant competitive access providers ("CAPs") that have recently pioneered the deployment of innovative technologies -- including fiber optic and microwave networks -- in over 45 metropolitan areas across the country. ALTS, as well as many of its individual members, has participated actively in the numerous recent proceedings before the Commission addressing local competition issues.

As the voice of an industry in the initial stages of bringing competitive alternatives to local telecommunications service markets historically monopolized by dominant local exchange carriers ("LECs"), ALTS urges the Commission to take all possible steps to ensure that local service competition is permitted to flourish and that

CAPs not be unnecessarily impeded from competing in their respective markets. Accordingly, ALTS supports vigorously the maximum streamlined tariff rules for nondominant common carriers proposed in the NPRM. ALTS believes that the proposed rules, "designed to ease in the near term the existing tariff obligations for nondominant carriers," NPRM at 2, are entirely consistent with the Communications Act and will serve the public interest by promoting competition.

At the same time, given the demonstrated benefits that have resulted over the last decade during which the Commission's forbearance policy was in effect, ALTS strongly urges the Commission to take all available judicial and legislative action necessary to reinstate that forbearance policy, including appeal of the AT&T v FCC decision discussed below, and/or amendment of the Communications Act.

I. THE PUBLIC INTEREST REQUIRES "MAXIMUM STREAMLINED REGULATION" OF NONDOMINANT CARRIERS

In AT&T v. FCC,[1/] the D.C. Circuit struck down the Commission's longstanding permissive detariffing rules (its "forbearance rules") which excused nondominant common carriers from the tariff filing requirements of Section 203 of the Communications Act of 1934 (the "Communications Act"). AT&T v. FCC did not, however, affect the Commission's longstanding and well-established conclusions that "minimal tariff regulation of nondominant common carriers serves the public interest," NPRM at 4, and that it is appropriate (and lawful) to apply different levels of regulation

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[1/] AT&T v. FCC, 978 F.2d 727 (D.C. Cir.), *rehearing en banc denied*, Jan. 21, 1993. This decision became effective on March 9, 1993, when the mandate was issued.

to different carriers depending upon the extent of their market power.[2] Accordingly, the Commission correctly concluded that these matters are unaffected by AT&T v. FCC. NPRM at 3, para. 6. The policy and public interest concerns underlying forbearance -- namely that market conditions can and will ensure the fairness of nondominant carrier rates, and that the imposition of unnecessary regulatory burdens on these small carriers would burden competition -- remain compelling today, and support the application of "maximum streamlined regulation" to nondominant carriers, as proposed in the NPRM.[3]

As a result of AT&T v. FCC the Commission is without discretion to exempt any common carrier from filing a tariff. Under the Communications Act, common carriers consist of virtually all providers of interstate and foreign communication by wire or radio, including CAPS, interexchange carriers ("IXCs"), all providers of resold telecommunications services, including switchless resellers, universities, hospitals, hotels/motels, and other aggregator locations.[4] Thus, absent adoption of the

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[2] See Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorization Therefor, Second Report and Order, 91 F.C.C.2d 59 (1982); id., Fourth Report and Order, 95 F.C.C.2d 554 (1983).

[3] "Maximum streamlined regulation" refers generally to regulation that permits tariffs to take effect on one day notice, and to be filed without cost support. See Competition in the Interstate Interexchange Marketplace, 6 FCC Rcd 5880 at 5881 (para. 5) (proposing maximum streamlined regulation for AT&T's competitive service) ("AT&T Competition Order"). In the NPRM the Commission also proposes additional tariff flexibility for nondominant carriers, including permitting carriers to file tariffs containing either maximum rates or a range of rates in lieu of actual rates. NPRM at 9-10 (para. 22). See Section II infra for discussion concerning specific proposed rules.

[4] 47 U.S.C. § 156. As of March 1992 there were an estimated 482 carriers purchasing switched access service from LECs. NPRM at para. 10. This number does not account for the literally thousands of smaller carriers and other entities that

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maximum streamlined regulation proposed in the NPRM, the sudden termination of the decade-old forbearance policy can be expected to impose unnecessary costs (both direct and indirect) upon all nondominant carriers and the markets they serve. Direct costs include "delaying the availability of new services and price reductions," and "injecting regulatory uncertainty into the marketplace."[5/] Indirect costs include denying carriers the "full pricing flexibility needed to react to market conditions and customer demands" (thereby diminishing carriers' ability to compete fully in the market), and "creating regulatory delays and uncertainty" which serve to dilute full competition.[6/] It would also unnecessarily burden the Commission, whose scarce resources should justly be directed toward regulation of LECs -- hugely profitable companies with both the incentive and ability to eliminate competition by cross-subsidizing competitive services with monopoly rents. More importantly, dominant carriers, especially LECs, merit vigilant regulation because they are insulated from market pressures. Today, for example, the LECs dominate approximately 99% of the market for local services, and so are largely free from competitive forces.[7/]

[4/](...continued)
provide service on a resold basis and who do not themselves purchase access service.

[5/] AT&T Competition Order at 5889, paras. 78 and 79.

[6/] Id. at para. 80.

[7/] See "Communications Daily," March 25, 1993, at 1 (AT&T Chairman Robert

II. THE PROPOSED RULES ARE CONSISTENT WITH BOTH THE COMMUNICATIONS ACT AND THE COMMISSION'S LONGSTANDING GOAL OF PROMOTING COMPETITION

As discussed below, the maximum streamlined rules proposed in the NPRM are consistent with the Commission's longstanding policies promoting competition, comply with AT&T v. FCC, will serve to minimize the regulatory burden on nondominant carriers, and are essential to continued growth in competition in the local services and interexchange markets.[8/]

A. The Commission Should Adopt Its Proposal to Minimize Tariff Notice Requirements

The Commission has proposed that the notice period required before tariffs can take effect shall be no less than one day. NPRM at 8, para. 15.[9/] This rule is consistent with Section 203(b)(2) of the Communications Act, which provides that the Commission, in its discretion and "for good cause shown" can modify the Communications Act's tariff notice provision so long as the notice period is not specified to be more than 120 days.[10/]

[8/] See NPRM at 7, para. 12 (concluding that "as a matter of policy, existing tariff regulation of nondominant carriers inhibits price competition, service innovation, entry into the market, and the ability of firms to respond quickly to market trends").

[9/] Existing nondominant tariff rules permit nondominant tariffs to go into effect on 14 day notice.

[10/] It is also consistent with the Section 204 of the Communications Act, which provides that "the Commission may... enter upon a hearing concerning the lawfulness" of a filed tariff prior to its effective date (emphasis supplied). As indicated, this authority is discretionary. Moreover, precedent under the Interstate Commerce Act indicates that a one-day notice period is consistent with congressional intent in adopting both the Interstate Commerce Act and the Communications Act, and thus is lawful. See Southern Motor Carriers Rate Conference v. United States, 773 F.2d 1561 (11th Cir. 1985). See also AT&T Competition Order, 6 F.C.C. Rcd. at 5897 n.145 (in which the

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In addition, a one day notice period would advance the public interest. As the Commission notes in the NPRM, the purpose of a 14 day notice period is to provide the Commission an opportunity to investigate the lawfulness of tariffs before they become effective. For nondominant carriers operating in a competitive environment such review is entirely unnecessary, because competition will ensure that rates are just and reasonable. The fact that the Commission has never once invoked its statutory discretion to suspend and investigate rates filed by a nondominant carrier is empirical evidence of this point. NPRM at para. 14.

Moreover, subjecting nondominant carriers to a 14 day tariff review process would impose substantial costs that will be avoided under the maximum streamlined rules. There can be no doubt that under a 14 day notice period LECs will file "nuisance" petitions opposing nondominant carrier tariffs. Designed to harass emerging competitors and cast doubt in the marketplace concerning the lawfulness of their tariffs, such petitions are the obvious continuation of the LECs' longstanding efforts to preclude or delay competition in the local services market. Such harassing tactics are illustrated by the fact that Bell Atlantic has recently filed unauthorized and utterly baseless protests opposing tariffs filed by a number of CAPs following the AT&T v. FCC.[11/] Despite the baseless nature of these protests, the CAPs nevertheless are

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[10/](...continued)
Commission concludes that the legislative history of the Communications Act indicates that Section 203 of the Act was intended to have the same meaning as the correlative provisions of the Interstate Commerce Act, on which Southern Motor Carriers is based).

[11/] Since the AT&T v. FCC decision Bell Atlantic filed unauthorized and baseless protests against the following ALTS members: Bay Area Teleport, Eastern Telelogic
(continued...)

forced to expend significant resources to defend against Bell Atlantic's attack. If the Commission extends the notice period beyond one day, it can reasonably expect to see a considerable escalation of such harassment. LECs, whose legal costs are incorporated into their rate base with guaranteed recovery from monopoly service rates, have more than adequate incentive and ability to deplete CAP resources through such nuisance litigation.

Extending the notice period will also prevent CAPs from responding quickly to competition. ALTS members -- pioneers in providing alternatives to unresponsive LEC services -- should not be prevented from continuing to introduce into the market innovative new services. The public interest will not be served if the introduction of new CAP services is restricted by an unduly lengthy notice period and the fear of harassing litigation.

B. The Commission Should Adopt Its Proposal To Grant Nondominant Carriers Flexibility In Defining & Pricing Their Services

The Commission proposes to give CAPs and other nondominant carriers broad flexibility in defining new services. NPRM at 9, para. 21. It also proposes to provide

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[11/](...continued)
Corporation, M H Lightnet, Inc, MFS Telecom, Inc, and Teleport Communications Group, Inc. The hypocritical and meritless nature of these protests is illustrated by the fact that Bell Atlantic argues that the CAPs' maximum rate tariffs violate the Communications Act because they permit a carrier to set rates below cost. Yet Bell Atlantic's own cellular subsidiary, Bell Atlantic Mobile Systems, Inc. ("BAMS") has filed a tariff (Tariff No. 2) in which four of its six rate schedules establish a minimum rate of zero -- the same as having no minimum rate at all. Thus, under Bell Atlantic's own logic, its BAMS Tariff No. 2 itself must violate the Communications Act. In fact, the BAMS tariff constitutes an admission by Bell Atlantic that maximum only and minimum/maximum rate structures fully comply with the requirements of the Communications Act.

maximum rate flexibility by permitting nondominant carriers to file either a maximum rate or a range of rates.

This flexibility is absolutely necessary if CAPS and other nondominant carriers are to be able to compete against dominant carriers and to provide consumers with increased service options under a wide variety of pricing structures. The NPRM provides this flexibility by relieving nondominant carriers of the burden of filing constant tariff revisions, which slow the pace of innovation and impose administrative and filing costs that, while insignificant to monopoly LECs (who are guaranteed to recover all such costs through monopoly service rates), can be chillingly significant to competitive providers. In proposing maximum rate flexibility, the Commission recognized that such flexibility nourishes a competitive marketplace, which stricter tariffing requirements could harm. For these reasons, ALTS urges the Commission to adopt its proposed rules.

C. The Commission Should Adopt Its Proposal To Streamline The Tariff Filing Process For Nondominant Carriers

The Commission's efforts to simplify the tariff filing process by (i) permitting nondominant carriers to file tariffs and updates on floppy disks, (ii) providing carriers flexibility in indicating material that is new or changed, (iii) eliminating formalities governing the form of the transmittal letter accompanying the tariffs, and (iv) permitting carriers to adopt their own methods of classifying their services and practices, is entirely appropriate given the competitive nature of the industries in which nondominant carriers participate and the innovate nature of the services they offer. In providing nondominant carriers maximum flexibility in defining their services, terms and conditions, the Commission will minimize regulatory impediments to the filing of novel

and innovative offerings. Similarly, such flexibility will reduce the frequency -- and the related expense -- with which CAPs must file tariff revisions. This degree of flexibility will also minimize the burden on Commission resources in monitoring and enforcing compliance with unnecessary regulations. Finally, allowing filings on floppy disks is a purely pragmatic means of conserving storage space within the Commission's offices, and will save nondominant carriers considerable duplication costs. Accordingly, ALTS urges the Commission to adopt these proposed rules.

III. CONCLUSION

For the foregoing reasons, ALTS urges that the Commission adopt its proposed rules. At the same time, given the demonstrated benefits that have resulted over the last decade in which the Commission's forbearance policy was in effect, ALTS urges the Commission to vigorously pursue all available judicial and legislative action (including appeal of AT&T v. FCC and amendment of the Communications Act) to reinstate its forbearance policy.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 29, 1993, the foregoing documents were served on the following individuals:

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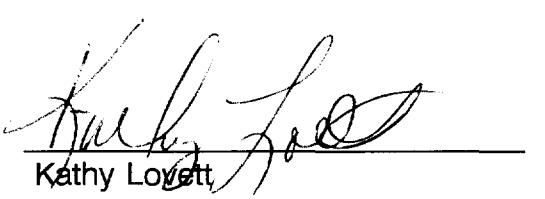

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